

**BEFORE PUBLIC LAW BOARD NO. 6043**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
and  
ILLINOIS CENTRAL RAILROAD**

**Case No. 24**

**STATEMENT OF CLAIM:**

Appeal of the five-day suspensions issued to Claimants John G. Lee, Edward F. Jackson, and Brian A. Russell on charges that the Claimants allegedly failed to properly and safely perform their duties in connection with an incident in which Claimant Lee sustained an alleged personal injury.

**FINDINGS:**

At the time of the events leading up to this dispute, Claimants Lee and Jackson were employed by the Carrier as Trackmen, and Claimant Russell was employed by the Carrier as an Assistant Foreman. All three Claimants were headquartered at Hattiesburg, Mississippi.

By letter dated March 10, 2004, the Claimants were notified to attend a formal hearing and investigation on charges that the Claimants had failed to safely and properly perform their work and had violated Carrier rules and/or instructions during an incident in which Claimant Lee sustained an alleged personal injury. The investigation was conducted, as scheduled, on March 19, 2004. By letter dated April 8, 2004, the Claimants were notified that as a result of the investigation, they had been found guilty as charged and they each were assessed a suspension of five working days, which would be held in abeyance for six months, provided the Claimants did not incur any further disciplinary actions. The Organization thereafter filed a claim on behalf of the

Claimants, challenging the Carrier's decision to issue the five-day suspensions. The Carrier denied the claim.

The Carrier initially contends that the Claimants were afforded a fair and impartial hearing. The Carrier further asserts that the record clearly supports a finding of guilt for the Claimants' failure to comply with the Carrier's Operating Rules. The Carrier maintains that the record demonstrates that the Claimants failed to use wood blocking and/or use a backhoe to hold down the rail, both of which were readily available. The Carrier points out that the Claimants each acknowledged that they should have used one of the numerous backhoes working with them.

The Carrier insists that the Claimants were guilty of the charges, and five-day suspensions were appropriate discipline. The Carrier ultimately contends that the instant claim is without merit, and should be denied in its entirety.

The Organization initially contends that the Carrier failed to meet its burden of proof. The Organization insists that the record does not contain any positive evidence whatsoever to support the Carrier's findings of any actions inconsistent with the Carrier's rules. The Organization argues that there is considerable evidence in the record that the Claimants did, in fact, safely and properly perform their work, and they did not violate the Carrier's rules and/or instructions. The Organization asserts that, at best, the charges are ridiculous, and the charges are without any substantiation or corroborative testimony. The Organization insists that there was absolutely no probative evidence to support the Carrier's findings.

The Organization then asserts that the Carrier failed to afford the Claimants a fair

and impartial hearing in that the Carrier has failed to apply and enforce its rules with reasonable uniformity for all employees. Moreover, the Organization argues that the Carrier pre-judged the Claimants, and the hearing officer's conduct was not conducive to a fair and impartial hearing. The Organization therefore contends that the Carrier's imposition of discipline was unreasonable, arbitrary, capricious, discriminatory, and inappropriate in every respect.

The Organization ultimately contends that the instant claim should be sustained in its entirety.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the procedural arguments raised by the Organization, and we find them to be without merit. This Board finds that the Claimants were afforded a fair and impartial hearing and were guaranteed all of their due process rights.

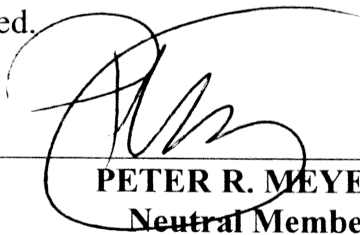
This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimants were guilty of failing to safely and properly perform their work and violated Carrier rules and instructions during an incident in which Claimant Lee was injured. The record is clear that the Claimants did not properly service the rail as required by the Carrier's rules.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

The Claimants in this case were issued a five-day overhead suspension each. Given the seriousness of this incident, this Board cannot find that the Carrier's action in suspending the Claimants for five days was unreasonable, arbitrary, or capricious. Therefore, the claims must be denied.

**AWARD:**

The claims are denied.

  
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**PETER R. MEYERS**  
Neutral Member

  
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**ORGANIZATION MEMBER**

**DATED:** 6-8-06

  
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**CARRIER MEMBER**

**DATED:** 6/8/06